



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** East West Research Inc.

**File:** B-236723

**Date:** December 8, 1989

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### DIGEST

Rejection of alternate product as unacceptable under alternate products clause because of lack of sufficient information to establish equivalence was unobjectionable where protester was unable to supply specifically requested information the agency reasonably determined was necessary to establish acceptability of the alternate product.

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### DECISION

East West Research, Inc., protests the rejection of its proposal offering an alternate product, and the award of a contract to Certanium Alloys & Research Co., under small purchase request for quotations (RFQ) No. DLA400-89-Q-N750, issued by the Defense Logistics Agency (DLA) for 200 pounds of welding electrode, part number Certanium 889. The proposal was rejected because DLA determined that East West's alternate product was technically unacceptable based on the firm's failure to furnish information requested for evaluation purposes.

We deny the protest.

The RFQ contained an alternate offers clause providing that any product offered must be either identical to or physically, mechanically, electrically and functionally interchangeable with the identified product (Certanium 889). It also stated that since neither detailed specifications nor other data may be available for use in evaluating the technical acceptability of other products, offerors must furnish with their offers of any alternate products copies of all drawings, specifications, or other data necessary to clearly describe the characteristics and features of the product; the clause warned that the failure to furnish the necessary information may preclude consideration of the offer.

Five quotations were submitted, with unit prices ranging from \$11.18 to \$35.30. Certanium, which quoted a unit price of \$35.30, was the only firm that quoted on the specific product cited in the RFQ item description. East West quoted its part number Taurus/A, an alternate product, at a unit price of \$23.75. With its quotation, East West submitted for use in the evaluation of the acceptability of its item what it describes as "catalog data." After reviewing this data, the contracting officer notified East West that its quotation did not contain adequate information for the evaluation of its alternate product, and requested that East West submit information on the chemical composition of both its item and the specified item for comparison purposes. The protester did not submit the requested details on the chemical composition and other technical data, but rather stated that it "just couldn't believe the request" for the composition of the two items. Since the only acceptable quotation was submitted by Certanium, a purchase order in the amount of \$7,060 was issued to that firm.

East West contends that the request for the chemical compositions of the two items was unreasonable, and that its noncompliance with the request thus did not warrant rejecting its proposal, because (1) the composition of the Certanium item is proprietary and would be difficult or impossible for East West to obtain, (2) chemical composition equivalence has nothing to do with the selection of a welding electrode, and thus is not relevant to the acceptability of its item, and (3) the agency does not have a qualified metallurgist who would be qualified to evaluate the chemical compositions even had it furnished this information.

The procuring agency is responsible for evaluating the data supplied by an offeror and ascertaining if it provides sufficient information to determine the acceptability of the offeror's product; we will not disturb the agency's technical determination in this regard unless it is shown to be unreasonable, which the protester must affirmatively prove. See Micro Lamps, Inc., B-229737, Mar. 18, 1988, 88-1 CPD ¶ 288; Rotair Indus., Inc., B-219994, Dec. 18, 1985, 85-2 CPD ¶ 683. Even where information may be difficult to obtain due to its proprietary nature, an agency properly may determine that an alternate product offer does not establish the acceptability of the alternate without that information, so long as it is reasonably necessary for a thorough evaluation. See NAK Eng'g & Consultants, Inc., B-223719, Nov. 25, 1986, 86-2 CPD ¶ 607. We find the agency's determination reasonable here.

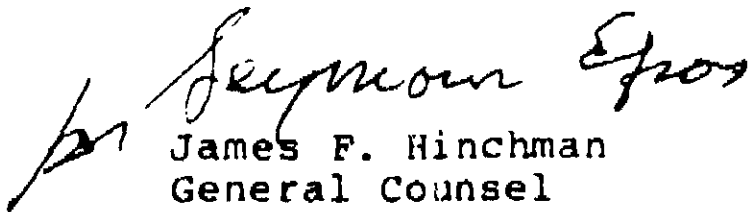
As indicated above, the RFQ provided that any alternate item must be identical to or physically and otherwise interchangeable with the specified item, and specifically required offers to furnish sufficient information to establish this equivalence. DLA explains that it needed to compare the chemical compositions to judge whether East West's offered alternate was equivalent to the specified Certanium electrode because the selection of a welding electrode (consisting of a metal welding rod and a flux coating) for a specific application depends on the composition of the metal rod and metal to be welded, and the heat that will be generated by the chosen electrode when it is melted; without the chemical composition of an alternate electrode, the agency could not determine whether the alternate would be suited to all of the same applications as the specified item.

East West asserts that the chemical composition in fact is not necessary to determine the acceptability of its electrode, and that its electrode will perform the same as Certanium's since it melts within the same temperature range (7 - 10,000 degrees). East West has provided no independent technical documentation (e.g., a statement by a metallurgist) supporting its position, however, and absent such evidence we have no basis for questioning DLA's technical judgment that one electrode might not be as suitable for a certain application as another, depending on its chemical composition. See Boliden Metech, Inc., B-229861.2, B-229862.2, May 9, 1988, 88-1 CPD ¶ 446. East West also maintains that the equivalence of its electrode could have been established by testing. However, the solicitation did not provide for testing; rather, as indicated above, it specifically provided that the acceptability of alternate products was to be established through information submitted with the offers.

The fact that the Certanium 889 chemical composition may be proprietary, and thus difficult or impossible to obtain, does not preclude DLA from requiring such information; as indicated above, an agency nevertheless may require such proprietary technical information where it is necessary to determine the acceptability of an alternate item. See generally NAK Eng'g & Consultants, Inc., B-223719, supra. East West's assertion that DLA lacks the necessary expertise to evaluate the chemical composition information is without merit; had the information been furnished, DLA would have been responsible for evaluating it properly, just as with any evaluation information. DLA states that it did in fact have available suitable experts to evaluate this information.

East West asserts that DLA's actions here in requiring the chemical composition information were intended to preclude East West from receiving the award. To establish such bias or bad faith, however, a protester must prove that the contracting agency directed its actions with the specific and malicious intent to injure the protester. H. David Feltoon, B-232418, Jan. 5, 1989, 89-1 CPD ¶ 10. East West has presented no evidence in this regard here.

The protest is denied.

  
James F. Hinchman  
General Counsel